

MOSER LAW FIRM, PC



Steven J. Moser

Tel: 631-824-0200

steven.moser@moserlawfirm.com

April 23, 2024

VIA ECF

Hon. Anne Y Shields, USMJ
United States District Court, EDNY
100 Federal Plaza
Central Islip, NY 11717

Re: *Yanes v Nilkhant 2 Car Wash*, Case No. 23-cv-09454

Dear Judge Shields:

The undersigned represents the Plaintiff Lilliana Carolina Yanes. Pursuant to the Court's initial conference order, the parties submit this joint letter.

Basis for federal jurisdiction

The Court has subject matter jurisdiction over the Plaintiff's FLSA Claims under 29 U.S.C. 216(b) and supplemental jurisdiction over Plaintiff's NYLL claims under 29 USC 1367.

A statement confirming that all defendants have been served and answered

All defendants have been served and have answered the complaint.

Statement as to whether there are counterclaims or crossclaims.

Defendants have not asserted any crossclaims or counterclaims.

Description of Plaintiff's Claims

The plaintiff was an employee who cleaned vehicles at the Bethpage Car Wash. She worked from approximately March 15, 2020, until July 18, 2023. She was paid the New York State minimum wage rate. However, the Plaintiff alleges that she and her co-workers were subject to the following policies that violated the FLSA and the NYLL:

- (a) *Off-the-clock pre and post-shift work.* Employees were not paid for work they performed before and after the car wash was open to the public.
- (b) *Failure to pay for all hours forming part of the continuous workday.* Employees were not paid for hours during which the car wash was closed temporarily during the regular workday due to inclement weather.

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- (c) *Call-in Pay.* Employees who reported for their regular shifts were sometimes sent home but did not receive “call-in pay” as required by 12 NYCRR 142-2.3.
- (d) *As a result of the foregoing three policies,* the Defendants failed to pay employees for all regular and overtime hours worked.
- (e) *Tip theft.* Defendants did not keep accurate tip records and permitted managerial employees to participate in the tips.
- (f) *Hiring notice and wage statement violations.* Defendants did not furnish a hiring notice to employees as required by NYLL 195(1), and the wage statements were inaccurate because they did not include tips as required by NYLL 195(3).

Defendants' Position

Defendants deny the allegations in the complaint. Defendants assert that employees received all required compensation. Defendants also deny that they engaged in tip theft or that managerial employees received tips. Defendants deny that they violated causes of action under New York State Labor Law § 195, the “*Hiring notice and wage statement violations.*” Defendants also assert that these causes of action should be dismissed based on lack of standing and subject matter jurisdiction. *See, Saavedra v. Dom Music Box Inc.*, No. 21-CV-6051, 2024 WL 208303, at *5 (E.D.N.Y. Jan. 19, 2024).

A statement describing potential informal paper discovery

The parties defer to the Court’s discovery protocols in FLSA cases with one caveat. Defendants have denied that they meet the income threshold for liability under the FLSA and that they are an enterprise engaged in commerce. Plaintiffs request that, to the extent the Defendants do not stipulate to FLSA coverage, they furnish tax returns and information regarding the origin of the products and materials used by the car wash.

Date for Proposed Status Report and Status Conference

The parties propose that the Court direct them to submit a status report on or before **June 24, 2024**, and that a status conference be scheduled for **July 1, 2024**

The parties further request that the Court refer the case for mediation.

Respectfully Submitted,

Steven J. Moser
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CC: All counsel of record via ECF